

Overview - Open Meetings Act

OMA contains definitions & requirements for public bodies, their meetings, and proceedings. PA 254 of 2020 amended the OMA to permit public bodies to meet electronically through March 31, 2021.

Definitions for:

- public body
- public notice
- specific types of meetings (regular, special, closed, others)
- decision
- quorum
- disqualified member
- abstain
- majority
- round-robin voting
- tie vote

Requirements for:

- public notices
- canvassing board members
- quorums
- use of electronic communications among board members
- closed session meetings
- public attendance at open meetings
- time limits for public comment
- scheduling public comment during a meeting
- recording & broadcasting public proceedings
- minutes, their availability, when posted
- adjournment
- imposing voting requirement greater than one used by the Michigan Legislature
- proxy voting
- roll call votes
- secret ballot
- use of electronic platforms (PA 254 of 2020)

Highlights from the *Open Meetings Act Handbook*

Open Meetings Act (OMA) 1976 PA 267, MCL 15.261 through 15.275

Copies of the Handbook are available from mi.gov/foia-ag

(All excerpts are verbatim from the Handbook unless explicitly noted. **Bold face** type is used for ease of locating a particular topic.)

The Open Meetings Act (OMA) took effect January 1, 1977.

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the OMA.

Public body defined:

[A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement. [Emphasis added.]

The term "public body" connotes a collective entity and does not include an individual government official. The OMA does not apply to private, nonprofit corporations.

Public notice requirements. A public notice must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations the public body considers appropriate. If a public body is a part of a state department, a public notice must also be posted in the principal office of the state department.

Public notice requirements are specific to the type of meeting:

- (1) For **regular meetings** of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
- (2) For a **change in schedule** of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
- (3) For a **rescheduled regular or a special meeting** of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.

(4) A meeting of a public body which is **recessed** for more than 36 hours shall be reconvened only after public notice has been posted at least 18 hours before the reconvened meeting.

Agendas

While the OMA requires a public body to give public notice when it meets, it has no requirement that the public notice include an agenda or a specific statement as to the purpose of a meeting. **No agenda format is required by the OMA.**

All decisions must be made at a meeting open to the public.

Decision defined: "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."

Canvassing board members: an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA, so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to the avoid the OMA.

A quorum of a board may gather outside an open meeting without violating the OMA in some instances. In addition to a purely social gathering or chance gathering that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a civic organization, listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a decision.

The OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely advisory or only capable of making 'recommendations concerning the exercise of governmental authority.'"

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates public policy" and the committee or subcommittee proceedings are, therefore, subject to the OMA.

Use of e-mail or other electronic communications among board members during an open meeting – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that

constitutes deliberations toward decision-making or actual decisions **violates the OMA**, since it is in effect a "closed" session.

Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

Closed session defined: "a meeting or part of a meeting of a public body that is closed to the public." Section 9(1) of the OMA provides that the minutes of an open meeting must include "the purpose or purposes for which a closed session is held."

A public body may meet in a closed session *only* for one or more of the permitted purposes specified in section 8 of the OMA. The limited purposes for which closed sessions are permitted include, among others:

- (1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named person requests a closed hearing.*
- (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a closed hearing.*
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- (4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, *but only if* an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- (5) To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential.* However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.
- (6) To consider material exempt from discussion or disclosure by state or federal statute. But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.

Decisions must be made during an open meeting, not the closed session.

PUBLIC ATTENDING OPEN MEETINGS

Excluding individuals – no one may be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

Identifying public attendees – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attend a public meeting.

Speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a rule requiring individuals to identify themselves if they wish to speak at a meeting.

A public body may adopt a rule imposing individual time limits for members of the public addressing the public body. But a rule limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.

The OMA only requires that a meeting be held "in a place available to the general public" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.

A public body has discretion under the OMA when to schedule public comment during the meeting. Thus, scheduling public comment at the beginning or the end of the meeting agenda does not violate the OMA. *The public has no right to address the commission during its deliberations on a particular matter.* (emphasis added)

The right to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting. A board may establish reasonable regulations governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage. And the exercise of the right to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.

MINUTES

At a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes must include all roll call votes taken at the meeting.

Proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved minutes must be made available for public inspection within five days after the public body's approval.

Minutes be approved at the board's next meeting. Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

A separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes.

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the OMA. The board secretary may furnish the minutes of a closed session of the body to a board member. *A member's dissemination of closed session minutes to the public, however, is a violation of the OMA.* (emphasis added)

PARLIAMENTARY PROCEDURES

Core principle – for the actions of a public body to be valid, they must be approved by a majority vote of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.

Quorum defined: the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.

Quorum is defined by the statute, charter/provision, or ordinance creating the board. (emphasis added)

Disqualified member defined: A member of a public body who is disqualified due to a conflict of interest may not be counted to establish a quorum to consider that matter.

Losing a quorum: Even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.

VOTING

Abstain means to refuse to vote. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.

Adjourning the meeting A presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.

Imposing a greater voting requirement where the [Michigan] Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to alter certain policies or bylaws.

Majority means simply "more than half."

Proxy voting: Without explicit statutory authority, this practice is not allowed.

Roll call vote: there is no bright line rule for conducting a roll call vote.

Round-robin voting defined: approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "Round-robinning" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.

Secret ballot: The OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "decision" is defined to include voting. The OMA prohibits a "voting procedure at a public meeting that prevents citizens from knowing how members of a public body have voted." Obviously, the use of a secret ballot process would prevent this transparency.

Tie vote – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.

PA 254 of 2020 & the COVID-19 PUBLIC HEALTH EMERGENCY

PA 254 of 2020 amended the OMA to protect public health during the COVID-19 emergency. The following highlights are paraphrased from “Fact Sheet Michigan Municipal League Open Meetings Act-Virtual Meetings Until April 1, 2021.”

Procedures must utilize an electronic platform that allows two-way communication between members of the public body and the public.

Other requirements for public access to and participation in the public meeting remain essentially the same.

Meeting notices must include:

- an explanation of why the public body is meeting remotely,
- how members of the public (including persons with disabilities) may participate,
- how members of the public can directly contact members of the public body,
- posting meeting agenda online at least two hours before the meeting begins.

Minutes must include notice that member(s) are attending remotely. If a member attends remotely for a purpose other than military duty, the announcement must include their physical location (city, township, county, village, or state.)